

R82. Alcoholic Beverage Control, Administration.

R82-1. General.

R82-1-101. Scope and Effective Date.

These rules are adopted pursuant to section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the Department and all licensees and permittees of the Commission.

R82-1-102. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

- (1) "Act" means the Alcoholic Beverage Control Act, Title 32B.
- (2) "Commission" means the Utah Alcoholic Beverage Control Commission.
- (3) "Department " or "DABC" means the Utah Department of Alcoholic Beverage Control.
- (4) "Director" means the director of the Department of Alcoholic Beverage Control.
- (5) "Dispensing System" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.
- (6) "Guest Room" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn, hotel or resort.
- (7) "Manager" means, depending on the context, a:
 - (a) a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company;
 - (b) an individual chosen or appointed to direct, supervise, or administer the operations at a licensed business; or
 - (c) an individual who supervises the furnishing of an alcoholic product to another, regardless of the exact employment title that the person holds.
- (8) "Point of Sale" means that portion of a package agency, restaurant, limited restaurant, beer-only restaurant, airport lounge, on-premise banquet premises, reception center, recreational amenity on-premise beer retailer, tavern, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the Department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.
- (9) "Respondent" means a Department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.
- (10) "section" or "subsection" refers to sections and subsections of the Utah Code.
- (11) "Staff" or "authorized staff member" means a person duly authorized by the director of the Department to perform a particular act.
- (12) "subpart" refers to subparagraphs of this rule.
- (13) "Utah Alcoholic Beverage Control Laws" means any Utah statutes, Commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.
- (14) "Warning Sign" means a sign no smaller than 8.5 inches high by 11 inches wide, clearly readable, stating: "Warning: drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child. Call the Utah Department of Health at (insert most current toll-free number) with questions or for more information" and "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah." The two warning messages shall be in the same font size but different font styles that are no smaller than 36 point bold. The font size for the health Department contact information shall be no smaller than 20 point bold.

R82-1-103. General Provisions.

- (1) Authority. This rule is made pursuant to section 32B-2-202, which authorizes the Commission to act as the general policymaking body regarding alcoholic product in the state and to adopt rules accordingly.
- (2) Purpose. The purpose of this rule is to provide administrative guidance to the Department and members of the public.
- (3) Interest Assessment on Delinquent Accounts.

The Department may assess the legal rate of interest provided in sections 15-1-1 through -4 for any debt or obligation owed to the Department by a licensee, permittee, package agent, or any other person.
- (4) Dishonored Checks.
 - (a) The Department will assess a \$20 charge for any check payable to the Department returned for the following reasons:
 - (i) insufficient funds;
 - (ii) refer to maker; or
 - (iii) account closed.
 - (b) Receipt of a check payable to the Department which is returned by the bank for any of the reasons listed in subpart (4)(a) of this rule may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the Department offices, 1625 S. 900 West, Salt Lake City, Utah, plus the \$20 returned check charge. Failure to make good the returned check and pay the \$20 returned check charge within 30 days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.
 - (c) In addition to the remedies listed in subpart (4)(b) of this rule, the Department may require that the licensee, permittee, or package agent transact business with the Department on a "cash only" basis. The determination of when to put a licensee, permittee, or package agency operator on "cash only" basis and how long the licensee, permittee, or package agency operator remains on "cash only" basis shall be at the discretion of the Department and shall be based on the following factors:
 - (i) dollar amount of the returned check(s);
 - (ii) the number of returned checks;
 - (iii) the length of time the licensee, permittee, or package agency operator has had a license, permit, or package agency with the Department;
 - (iv) the time necessary to collect the returned check(s); and

(v) any other circumstances.

(d) A returned check received by the Department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit may, at the discretion of the Department, require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the Commission.

(e) In addition to the remedies established in this rule, the Department may pursue any legal remedies to effect collection of any returned check

(5) Administrative Handling Fees.

(a) Pursuant to subsection 32B-4-414(1)(b) a person, on a one-time basis, who moves the person's residence to this state from outside of this state may have or possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move if the person obtains Department approval before moving the liquor into the state, and the person pays the Department a reasonable administrative handling fee as determined by the Commission.

(b) Pursuant to subsection 32B-4-414(1)(c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if the person obtains Department approval before moving the liquor into the state, the person provides sufficient documentation to the Department to establish the person's legal right to the liquor as a beneficiary, and the person pays the Department a reasonable administrative handling fee as determined by the Commission.

(c) The administrative handling fee to process any request for Department approval referenced in subparts (3)(a) and (3)(b) of this rule is \$20.

(6) Case Handling Markup

(a) For purposes of the landed case cost defined in section 32B-2-304, "cost of the product" includes a case handling markup determined by the Department.

(b) If a manufacturer and the Department have agreed to allow the manufacturer to ship an alcoholic beverage directly to a state store or package agency without being received and stored by the Department in the Department's warehouse, the manufacturer shall receive a credit equaling the case handling markup for the product that is not warehoused by the Department.

(c) The Department shall collect and remit the case handling markup as outlined in section 32B-2-304.

(7) Listing and Delisting Product: Pursuant to section 32B-2-202, this rule authorizes the director to make internal Department policies in accordance with section 32B-2-206 for Department duties as defined by section 32B- 2-204 for listing and de-listing products to include a program to place orders for products not kept for sale by the Department.

R82-1-104. Advertising.

(1) This rule is made pursuant to subsection 32B-1-206(4) which authorizes the advertising of alcoholic product in this state under guidelines established by the Commission except to the extent prohibited by Title 32B.

(2) Definitions.

(a)(i) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media.

(ii) "Advertisement" or "advertising" does not mean:

(A) labels on products; or

(B) any editorial or other reading material in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule governs the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products by the Department, state stores, or type 1, 2 or 3 package agencies, as described in R82-2-301, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R82-2-301 shall comply with the advertising requirements listed in subpart (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) may not violate any federal laws referenced in subpart (3) of this rule;

(b) may not contain any statement, design, device, or representation that is false or misleading;

(c) may not contain any statement, design, device, or representation that is obscene or indecent;

(d) may not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) may not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

- (f) may not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for \$...".
 - (g) may not encourage or condone drunk driving;
 - (h) may not depict the act of drinking;
 - (i) may not promote or encourage the sale to or use of alcohol by minors;
 - (j) may not be directed or appeal primarily to minors by:
 - (i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;
 - (ii) employing any entertainment figure or group that appeals primarily to minors;
 - (iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;
 - (iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;
 - (v) using models or actors in the advertising that are or reasonably appear to be minors;
 - (vi) advertising at an event where most of the audience is reasonably expected to be minors; or
 - (vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.
 - (k) may not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;
 - (l) may not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;
 - (m) may not offer alcoholic beverages without charge;
 - (n) may not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and
 - (o) may provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.
- (7) Violations. A violation of this rule may result in any administrative penalties authorized by section 32B-3-205, and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to sections 32B-4-304 and -510.

R82-1-105. Label Approvals.

- (1) Authority. This rule is pursuant to sections 32B-1-601 through 32B-1-608 which give the Commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act,
- (2) Purpose.
 - (a) Pursuant to section 32B-1-604, a manufacturer may not distribute or sell in this state any malted beverage including beer, heavy beer, and flavored malt beverage unless the label and packaging of the beverage has been first approved by the Department.
 - (b) The requirements and procedures for applying for label and packaging approval are set forth in sections 32B-1-604 through 32B-1-606.
 - (c) This rule:
 - (i) provides supplemental procedures for applying for and processing label and package approvals;
 - (ii) defines the meaning of certain terms in the Malted Beverages Act; and
 - (iii) establishes the format of certain words and phrases required on the containers and packaging of certain malt beverages as required by section 32B-1-606.
- (3) Application of Rule.
 - (a) A complete set of original labels for each size of container must accompany each application for label and packaging approval.
 - (i) This includes all band, strip, front and back labels appearing on any individual container.
 - (ii) Original containers will not be accepted.
 - (iii) If original labels cannot be obtained, the following will be accepted:
 - (A) color reproductions that are exact size; or
 - (B) a copy of the federal certificate of label approval (COLA) from the Department of Treasury, Tax and Trade Bureau Form TTB F5100.31 with the exact size label if printed in color.
 - (b) An application for approval is required for any revision of a previously approved label.
 - (c) A "revision" includes any changes to packaging that significantly modifies the notice that the product is an alcoholic beverage.
 - (d) An application for approval is not required for any changes to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage such as temporary seasonal or promotional themes.
 - (e) Pursuant to section 32B-1-606, a malt beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol". Any packaging of a flavored malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains alcohol". The words in the statement must appear:
 - (i) in capital letters and bold type;
 - (ii) in a solid contrasting background;
 - (iii) on the front of the container and packaging;
 - (iv) in a format that is readily legible; and
 - (v) separate and apart from any descriptive or explanatory information.
 - (f) Pursuant to section 32B-1-606, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight. The statement must appear:
 - (i) in capital letters and bold type;
 - (ii) in a solid contrasting background;

- (iii) in a format that is readily legible; and
- (iv) separate and apart from any descriptive or explanatory information.

R82-1-106. Alcohol Content.

(1) This rule is made pursuant to sections 32B-1-607, which authorizes the Commission to make rules implementing Part 6, and 32B-2-204, which authorizes the Department to make rules related to measuring the alcohol content of beer.

(2) Before November 1, 2019, a product complies with Title 32B and rules governing labeling if:

- (a) the product is beer and if, after sampling, it is determined to contain no more than 3.35% alcohol by weight or 4.18% alcohol by volume; or
- (b) the product is heavy beer and if, after sampling, it is determined to contain at least 3.82% alcohol by volume.

(3) On or after November 1, 2019, a product complies with Title 32B and rules governing labeling if:

- (a) the product is beer and if, after sampling, it is determined to contain no more than 4.15% alcohol by weight or 5.18% alcohol by volume; or
- (b) the product is heavy beer and if, after sampling, it is determined to contain at least 4.82% alcohol by volume.

R82-1-107. Department Training Programs.

(1) Authority and general purpose. This rule is pursuant to 32B-1-704, which requires that the Department to make rules to develop and implement the retail manager and violation training programs.

(2) Application of the rule.

(a) The requirements for the retail manager and violation training programs described in section 32B-1-704.

(b) The Department shall accurately identify each individual who takes and completes a training program by maintaining a database in which individual are identified by the last four digits of their social security number or another four-digit number that the individual chooses and can remember.

(c) The Department will administer a test to ensure an individual taking a training program is focused and actively engaged in the training material throughout the training program.

(d) The Department shall issue a certification card to each individual who has completed a training program. Each licensee shall keep a copy of the card on the licensed premise for each individual required to complete the training program.

(e) A fee of \$25 will be charged to each individual for participation in a training program to cover the Department's cost of providing the training program.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: February 25, 2020

Authorizing, and Implemented or Interpreted Law: 32B-2-202

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